

2006 WL 5838689 (Mass.Super.) (Trial Pleading)
Superior Court of Massachusetts.
Norfolk County

Dennis HAMELIN, Individually and as Temporary Executor of the Estate of Lee Hamelin, Plaintiff,

v.

Carol Lynn McSORELY, and Citizens Bank, Sovereign Bank, Bank of America, South Coastal Bank, South Shore Cooperative Bank, Eastern Bank, Bank of Canton, Colonel Savings Bank, Washington Mutual, Peoples Federal Savings Bank, Quincy Cooperative Century Bank, and South Shore Savings Bank, Defendants.

No. 06 00465.
2006.

Complaint

Respectfully submitted, Plaintiffs, By their attorney, [India L. Minchoff](#), Esq. (652456), Law Offices of Russo & Minchoff, 123 Boston Street, 1st Floor, Boston, MA 02125, 617/740-7340, 617/740-7310.

INTRODUCTION

This case involves wide scale fraud and deceit by a woman who preyed on the emotional, mental, and physical fragility of an aging man. Prior to the death of Lee Hamelin (“the Decedent”), Carol McSorley (“Defendant”), unduly influenced, misappropriated and defrauded the Decedent out of money, and real and personal property.

PARTIES

1. Plaintiff, Dennis Hamelin, is an individual residing in San Diego County, California.
2. Plaintiff, Dennis Hamelin, is the duly appointed Temporary Executor of the Estate of his late father, Lee Hamelin.
3. Defendant, Carol Lynn McSorely, is an individual residing in Quincy, Massachusetts.
4. Citizens Bank is a **financial** institution with a location at 1200 Hancock Street, Quincy, Massachusetts.
5. Bank of America is a **financial** institution with a location at 440 Hancock Street, Quincy, Massachusetts.
6. South Coastal Bank is a **financial** institution with a location at 1259 Hancock Street, Quincy, Massachusetts.
7. Sovereign Bank is a **financial** institution with a location at 70 Quincy Avenue, Quincy, Massachusetts.
8. South Shore Cooperative is a **financial** institution with a location at 30 Franklin Place, Quincy, Massachusetts.
9. Eastern Bank is a **financial** institution with a location at 731 Hancock Street, Quincy, Massachusetts.
10. Bank of Canton is a **financial** institution with a location at 275 Quincy Avenue, Quincy, Massachusetts.
11. Washington Mutual is a **financial** institution with a location at 1266 Furnace Brook Parkway, Quincy, Massachusetts.

12. Colonial Federal Savings Banks is a **financial** institution with a location at 15 Beach Street, Quincy, Massachusetts.
13. Peoples Federal Savings Bank is a **financial** institution with a location at 61 Lenox Street, Quincy, Massachusetts.
14. Quincy Cooperative is a **financial** institution with a location at 85 Quincy Avenue, Quincy, Massachusetts.
15. Century Bank is a **financial** institution with a location at 651 Hancock Street, Quincy, Massachusetts.
16. South Shore Savings Bank is a **financial** institution with a location at 138 Franklin Street, Quincy, Massachusetts.

FACTUAL ALLEGATIONS

17. Prior to his death on February 25, 2006, the Decedent resided alone at 117 Sachem Street, Quincy, Massachusetts. Located on the Decedent's property was a second, smaller home, which was known as 119 Sachem Street, Quincy, Massachusetts ("the back house").
18. Defendant began occupying the back house as a tenant shortly before the death of the Decedent's wife in the late 1990's.
19. Preying on the Decedent's advanced age, emotional fragility, loneliness, and overall vulnerability as his wife fell ill and subsequently died, the Defendant began exerting undue influence over the Decedent.
20. The Defendant repeatedly and continually represented to the Decedent that she was in **financial** devastation and that she would become homeless because she was unable to afford her rental payments. The Defendant also repeatedly and continually represented to the Decedent that she was the only person who would provide to him care as he aged. Further, the Defendant continually disparaged the Plaintiff to the Decedent.
21. The Decedent used her position of trust to unduly influence the Decedent. Defendant convinced the Decedent to allow her to remain in the back house at 119 Sachem Street free of charge.
22. Shortly thereafter, on October 7, 2002, and while the Decedent was still grieving the death of his wife, the Defendant caused the Decedent to execute a deed to the real property granting to the Defendant the remainderman interest in exchange for one dollar (\$1.00). *See* Exhibit A.
23. The Decedent, however, was unaware at the time that the deed related to both homes on his real property as the deed, itself, stated only a single property address.
24. Pursuant to the Decedent's Will as well as his intentions as verbalized to the Plaintiff, Dennis Hamlin (the Decedent's only child), the Decedent intended on providing his son with his estate upon his death.
25. Also as the Decedent's mental, emotional, and physical health continued to deteriorate, the Defendant influenced the Decedent to name her as his attorney-in-fact. A Power of Attorney was allegedly executed by the Decedent on November 1, 2003. *See* Exhibit B.
26. The Decedent had two certificates of deposits each in the amount of one hundred fifty thousand (\$150,000.00) dollars, which he placed in an account that provided his son with survivorship rights.
27. In abuse of her fiducial position as Decedent's attorney-in-fact, the Defendant removed the Plaintiff's name from the Decedent's bank accounts and instead placed her name on each account. *See* Exhibit C.

28. Over a period of approximately two years, the Defendant wrongfully and without the knowledge of the Decedent converted over one hundred forty thousand (\$140,000.00) dollars of the Decedent's money. The Defendant converted the bulk of this money after the Decedent suffered a heart attack in 2005.
29. The Decedent told family members that the Defendant was constantly representing that she feared she would be homeless as she was **financially** unstable and had no retirement assets.
30. Three years after exerting her undue influence and fraud over the Decedent in order to obtain the remainderman interest in the real property, the Defendant placed the Decedent in a Nursing Home.
31. By waiting three years after the execution of the deed granting to the Defendant the remainderman interest, the Defendant was able to ensure that Mass Health or Medicaid would not be able to disregard the transfer.
32. The Defendant failed to inform the Plaintiff that she had placed his father in a nursing home.
33. While at the Nursing Home the Defendant asked its staff to contact his son. However, since the Decedent was unable to recall his son's telephone number he instructed the staff to call the Defendant.
34. The Nursing Home contacted **Elder** Services after the Defendant refused to provide them with the Plaintiff's telephone number.
35. Upon information and belief, an **Elder** Services investigation concluded that the Defendant had been **financially exploiting** the Decedent.
36. Shortly thereafter, on or about October 15, 2005, the Decedent executed a new power of attorney appointing Ronald Kearns, R.N., Esquire as his attorney-in-fact. This Power of Attorney revoked the prior power of attorney authorizing the Defendant to act as the Decedent's attorney-in-fact.
37. The Defendant's name was immediately removed from the Decedent's bank accounts.
38. As soon as the Defendant learned that her right to access the Decedent's accounts had been terminated she contacted the Nursing Home. The Defendant stated that she was on her way to the Nursing Home but failed to appear when she was told that Attorney Kearns was there and would be present during her visit.
39. The following day, the Defendant caused the Decedent to check himself out of the Nursing Home.
40. The Defendant subsequently arranged for a different attorney, Attorney Thomas Brynes, to prepare yet another power of attorney. This power of attorney re-appointed the Defendant, as the Decedent's attorney-in-fact. *See* Exhibit D.
41. Upon execution of this new power of attorney the Defendant brought the Decedent to his banks and caused him to again place her name onto his accounts so that she could regain "survivorship" rights in his assets.
42. The Plaintiff who had been traveling from California to Massachusetts during this time arrived in the following week.
43. The Decedent promptly revoked the power of attorney he had executed reappointing the Defendant as his attorney-in-fact and terminated her authority to access his accounts.

44. For many years the Decedent and the Plaintiff had discussed the Decedent's **financial** accounts, specifically that the Plaintiff would inherit them upon the Decedent's death. The Decedent at all times was unaware of the Defendant's personal use of his money.

45. The Defendant, either by her exertion of undue influence and fraud or by conversion of the Decedent's **financial** assets, purchased a new SUV in 2005 with the Decedent's funds.

46. The Defendant also ensured the construction of major capital improvements to the Defendant's real property prior to his death. The Decedent's funds were used to pay the costs of these capital improvements, which included, but were not limited to, the construction of new deck/porch.

47. The Plaintiff remained with his father until his death on February 24, 2006.

48. Less than one week after the Decedent's death Attorney Thomas N. Brynes, the attorney which prepared the power of attorney re-appointing the Defendant as the Decedent's power of attorney in October, 2005, mailed to the Plaintiff a letter advising the Plaintiff that his failure to vacate his father's home by March 3, 2006 would result in possible criminal charges. *See* Exhibit E.

49. In his correspondence, Attorney Brynes represented that his client, the Defendant, owned the Decedent's property and that if the Plaintiff felt it necessary to remain in the property beyond March 3, 2006, he would be required to pay a fifty (\$50.00) dollar per day use and occupancy fee to the Defendant. *Id.*

50. Given the above deceit on information and belief, the Defendant will attempt to convey and/or discrete the Decedent's real estate and funds in order to defeat Plaintiffs ability to prosecute this action and regain control of the assets she wrongfully controls.

COUNT I - BREACH OF FIDUCIARY RELATIONSHIP

51. Plaintiffs restate and re-allege the contents of paragraphs 1-50 as if set forth fully herein.

52. Defendant acted in a fiduciary capacity to the Decedent.

53. By virtue of her fiduciary relationship, Defendant had a duty to act in the best interests of the Decedent.

54. By taking advantage of Decedent's trust and dealing with the subject matters of such trust so as to benefit herself and prejudice the Decedent, Defendant breached her fiduciary duty.

55. Plaintiffs have suffered actual damages as a direct and proximate result of Defendant's breach of fiduciary relationship.

COUNT II- BREACH OF CONFIDENTIAL RELATIONSHIP

56. Plaintiffs restate and re-allege the contents of paragraphs 1-55 as if set forth fully herein.

57. The Decedent trusted in, and relied upon, the Defendant.

58. Defendant acted in a confidential relationship to the Decedent.

59. By virtue of her confidential relationship with the Decedent, Defendant had a duty to act in the best interests of the Decedent.

60. As a result of the above stated acts and commissions, Defendant took advantage of Decedent's trust in such a way as to benefit herself and prejudice the Decedent.

61. Plaintiffs have suffered actual damages as a direct and proximate result of Defendant's breach of her confidential relationship.

COUNT III- MISREPRESENTATION

62. Plaintiffs restate and re-allege the contents of paragraphs 1-61 as if set forth fully herein.

63. As a result of the above stated acts and commissions, the Defendant committed misrepresentation.

64. Actual damages were suffered as a direct and proximate cause of the Defendant's misrepresentations.

COUNT IV- DECEIT

65. Plaintiffs restate and re-allege the contents of paragraphs 1-64 as if set forth fully herein.

66. Defendant purposely and intentionally led the Decedent to believe that she would be homeless without his assistance, she was only person who cared for the Decedent, and without his assistance would be unable to provide any care to the Decedent.

67. Defendant knew that the Decedent would rely on her misrepresentations.

68. Actual damages were suffered as a direct and proximate cause of the Defendant's deceit.

COUNT V-FRAUD

69. Plaintiffs restate and re-allege the contents of paragraphs 1-68 as if set forth fully herein.

70. Defendant knowingly made material misrepresentations to the Decedent and knew that the Decedent would reasonably rely on the false representations to his detriment.

71. The Decedent did in fact rely on Defendant's misrepresentations.

72. Defendant's acts and commissions constitute fraud.

73. Plaintiffs have suffered damages as a direct and proximate cause of Defendant's acts.

COUNT VI- CONVERSION

74. Plaintiffs restate and re-allege the contents of paragraphs 1-73 as if set forth fully herein.

75. Defendant converted Decedent's assets without Defendant's knowledge or consent.

76. Plaintiffs have suffered damages as a direct and proximate cause of the Defendant's conversion.

COUNT VII-UNDUE INFLUENCE

77. Plaintiffs restate and re-allege the contents of paragraphs 1 -76 as if set forth fully herein.

78. Defendant intentionally preyed on the Decedent in his weakened emotional, mental and physical state, which in turn allowed Defendant to procure an interest in the Decedent's assets.

79. The disposition of the Decedent's assets to the Defendant was against the Decedent's true intentions and was procured by the exercise of undue influence.

80. Plaintiffs have suffered actual damages as a direct and proximate cause of the Defendant's undue influence.

COUNT VIII-INTERFERENCE WITH INHERITANCE

81. Plaintiff restates and re-alleges the contents of paragraphs 1-80 as if set forth fully herein.

82. Plaintiff has a legally protected interest with respect to an inheritance from his father by virtue, among other reasons, of being a legatee under his will and an heir at law.

83. Defendant engaged in a calculated and improper effort to frustrate the intention of the Decedent to deprive the Plaintiff of his interest in the assets of his father.

84. By her conduct, the Defendant has intentionally interfered with the Plaintiffs inheritance through her fraud and undue influence, which was directed at inducing the Decedent to transfer his real property to the Decedent and forcing the Plaintiff to incur significant legal fees and expenses.

WHEREFORE, Plaintiffs request the following relief:

1. Judgment in favor of the Plaintiffs;
2. Rescission of the transfer of property located at 117-119 Sachem Street, Quincy, Massachusetts;
3. Repayment by Carol McSorely of the principal amounts, plus interest, of all money wrongfully converted from the Decedent;
4. Defendant to pay Plaintiff's costs and attorney fees associated with this action;
5. An ex parte attachment in the amount of \$400,000.00 on the real estate located at 119-117 Sachem Street, Quincy, Massachusetts;
6. An ex parte trustee attachment on the Defendant's bank accounts in the amount of \$150,000.00; and
7. Such other relief as this deemed fair and just under the circumstances.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL COUNTS.

Respectfully submitted,

Plaintiffs,

By their attorney,

<<signature>>

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